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10 Attorneys for Complainant

11 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
12 OF THE STATE OF CALIFORNIA

13 In the Matter of the Investigation Against:
14 Kaiser Foundation Health Plan, Inc.,
15 Respondent.

Enforcement Matter No.: 15-082

STIPULATED SETTLEMENT AGREEMENT

17 IT IS HEREBY STIPULATED AND AGREED by and between the Parties to the above
18 entitled Enforcement Matter that the following matters are true:

19 **PARTIES**

20 1. Drew Brereton (Complainant) is the Deputy Director of the DEPARTMENT OF
21 MANAGED HEALTH CARE (the "Department")'s Office of Enforcement. Pursuant to
22 Government Code section 11180 *et seq.*, Complainant has been delegated with the powers and
23 authority by the Department's Director to conduct the Department's investigations and enforcement
24 matters. This investigation was brought solely in the official capacity of the Complainant Deputy
25 Director. The Complainant is represented in his official capacity by Sheila F. Gonzalez, Attorney IV
26 and Jennifer E. Marsh, Attorney III.

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1 2. Kaiser Foundation Health Plan, Inc., (the "Plan"), is represented in this matter by
2 Victor Sipos, Plan Senior Counsel. On or about November 4, 1977, the Plan was issued license
3 No. 933 0055 to operate a health care service plan.

4 **ADVISEMENTS AND WAIVERS**

5 3. The Plan has carefully read, fully discussed with counsel, and understands the effects
6 of this Stipulated Settlement Agreement.

7 4. The Plan is fully aware of its legal rights in this matter, including the right to a hearing
8 on any potential accusation related to this Enforcement Matter; the right to be represented by counsel
9 at its own expense; the right to confront and cross-examine the witnesses against it; the right to
10 present evidence and testimony on its behalf; the right to the issuance of subpoenas to compel the
11 attendance of witnesses and the production of documents; the right to reconsideration and court
12 review of an adverse decision; the right to require the Department to meet its burden of proof to
13 establish all elements of the violations charged at an administrative or other hearing, and all other
14 rights accorded by the California Administrative Procedure Act and other applicable laws.

15 5. By entering into this Stipulated Settlement Agreement, the Plan voluntarily,
16 knowingly, and intelligently waives and gives up each and every right set forth above with respect to
17 this Enforcement Matter.

18 6. The Parties agree that if the Plan discovers that it is in breach of any of its obligations
19 under this Stipulated Settlement Agreement, it will promptly notify the Department in writing of the
20 breach and what actions the Plan has or will undertake to cure the breach.

21 7. In the event any term or portions of any term set forth herein shall be declared invalid
22 or unenforceable for any reason by a court of competent jurisdiction, such term or any portion of any
23 term, to the extent declared invalid or unenforceable, shall not affect the validity or enforceability of
24 any other terms, and such other terms shall remain in full force and effect and shall be enforceable to
25 the maximum extent permitted by applicable law.

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ACKNOWLEDGMENTS

8. On March 6, 2013, the Department issued its Final Report concerning the routine medical survey of behavioral health services for the Plan. In the Final Report, the Department identified four uncorrected deficiencies related to the Plan's delivery of mental health services to its enrollees. In the Final Report, the Department acknowledged the ongoing remedial steps that the Plan had taken since the Department issued its preliminary report and informed the Plan that a Follow-Up Survey would commence within six months.

9. On June 24, 2013, the Department issued a Cease and Desist Order demanding that the Plan stop engaging in the conduct identified in the cited violations, and filed an accusation imposing an administrative penalty in the amount of four million dollars (\$4,000,000.00). The Plan agreed to pay the penalty in September 2014.

10. In July, 2013, the Division of Plan Surveys commenced the Follow-Up Survey, to determine whether the Plan had fully corrected the outstanding deficiencies. The onsite portion of the survey was conducted during October 2013, March 2014, and April 2014. Throughout the remainder of 2013 and 2014, the Department's Division of Plan Surveys continued work on the Follow-Up Survey and held several meetings with representatives from the Plan to gather additional information concerning corrective actions the Plan had taken to address the deficiencies identified in the Final Report. The Department issued the Follow-Up Survey Report on February 13, 2015. The Department determined that the Plan had corrected deficiency #1 and #2. However, the Department determined that the Plan failed to correct deficiency #3 and #4. As to deficiency #3, the Department found that the Plan's Behavioral Health Quality Assurance Program failed to ensure that effective corrective action is taken when deficiencies are identified, including those related to accessibility and availability of services (Rules 1300.70(a)(1) and (3); Rule 1300.70(b)(1)(D); Rule 1300.70(b)(2)(G)(3), Rules 1300.67.2.2(c)(1) and (5), and Rule 1300.67.2.2(d)(3)). As to deficiency #4, the Department found that the Plan failed to provide accurate and understandable behavioral health benefit and coverage education services for its members (Section 1374.72; Rule 1300.67(f)(8); and Rule 1300.80(b)(6)(B)).

11. On December 15, 2015 the Department's Division of Plan Surveys commenced a new

1 routine survey of the Plan. On June 12, 2017, the Department issued its Final Report for that survey,
2 finding under Deficiency #2 that the Plan's Quality Assurance Program failed to ensure effective
3 action is taken to improve care where deficiencies are identified in service elements, including
4 accessibility, availability, and continuity of care. (Health & Saf. Code §1370; Cal. Code Regs., tit. 28,
5 §§1300.70(a)(1), 1300.70(a)(3), 1300.70(b)(1)(D), 1300.70(b)(2)(G)(3), 1300.67.2.2(c)(1),
6 1300.67.2.2(c)(5), 1300.67.2.2(d)(3).) Deficiency #2 was a repeat deficiency from the Follow-Up
7 Survey Report issued in February 2015. The June 12, 2017 Final Routine Survey Report found
8 additional deficiencies, which are expressly not included in the scope of this agreement, nor are they
9 included in the scope of the release set forth in paragraph 21.

10 12. Since the Department issued its Final Report concerning the routine behavioral health
11 services for the Plan on March 6, 2013, the Plan has been in regular communications with the
12 Department regarding the Plan's Quality Assurance program in respect to the delivery of behavioral
13 health services to its enrollees. In addition, the Plan has made the following investments in
14 behavioral health services to continuously improve access:

15 a. From 2012 to May 2017, the Plan has hired approximately 850 additional Behavioral
16 Health therapists statewide.

17 b. From 2012 to May 2017, the Plan has hired approximately 188 additional Behavioral
18 Health physicians statewide.

19 c. The Plan has contracted with additional external Behavioral Health provider groups and
20 expanded use of these external providers as needed to improve access.

21 d. The Plan has made capital investments on additional buildings, medical offices, leased
22 office space and remodeled space to accommodate the additional new hires of behavioral health
23 practitioners statewide.

24 e. The Plan has implemented a mental health awareness campaign, aimed at reducing
25 stigma and expanding the number of enrollees who seek mental health services.

26 These investments demonstrate the Plan's ongoing commitment to expanding and improving access
27 to and the provision of mental health services.

28 13. The Plan acknowledges that the Department has determined that the deficiencies

1 identified in the Follow-Up Survey Report constitute a violation of Health and Safety Code
2 section 1374.72, and California Code of Regulations, title 28, section 1300.70(a)(1), (a)(3), (b)(1)(D),
3 (b)(2)(G)(3) and 1300.67.2.2(d)(3), 1300.67(f)(8), as described in the February 13, 2015 Follow-Up
4 Survey Report. The Plan further acknowledges that if the Department proved such violations at an
5 administrative hearing they would constitute cause for imposing discipline upon the Plan. The Plan
6 acknowledges that the Department may, as permitted by law, take into consideration past history of
7 deficiencies set forth in the February 13, 2015, Follow-Up Survey Report when assessing future
8 administrative or other penalties under California Code of Regulations, title 28, section 1300.86.

9 14. By entering into this Stipulated Settlement Agreement, the Plan does not admit any
10 liability or violation of the Knox-Keene Act or any other law or regulation, but acknowledges that
11 the Department found deficiencies, as set forth in the February 13, 2015, Follow-Up Survey Report.
12 However, the Plan agrees that it is in the best interest of the Plan's enrollees to enter into this
13 Stipulated Settlement Agreement and settle the Enforcement Matter. The Plan agrees to be bound
14 by the imposition of a corrective action plan, settlement terms and obligations as set forth in this
15 Stipulated Settlement Agreement.

16 RECITALS

17 15. The acknowledgements made by the Plan herein are only for the purposes of this
18 Enforcement Matter and shall not be admissible in any other criminal or civil proceeding; but, may
19 be used by the Department in future administrative proceedings and/or in considering penalties
20 against the Plan.

21 16. In the event of any future litigation (administrative or civil) between the Department
22 and the Plan, the Plan agrees it will not object on the basis of California Evidence Code section 1151
23 to the admissibility of corrective actions taken by the Plan per this Stipulated Settlement Agreement.

24 17. The Parties understand and agree that facsimile or PDF copies of the hard copy of the
25 original hand-signed Stipulated Settlement Agreement shall have the same force and effect as the
26 original. After the Plan representative has executed the document, the Plan shall forward the hard
27 copy of its original hand-signed Stipulated Settlement Agreement to the Department of Managed
28 Health Care's Office of Enforcement, located at 980 9th Street, Suite 500, Sacramento, CA 95814.

1 This Stipulated Settlement Agreement may be executed in counterparts.

2 18. Each signatory below warrants and represents that she or he has authority to sign on
3 behalf of, and to legally bind, her or his respective entity.

4 19. This Stipulated Settlement Agreement shall be binding on all Parties, including all
5 principals, executors, administrators, representatives, and successors in interest.

6 20. This Stipulated Settlement Agreement is the entire agreement between the Parties and
7 supersedes any prior negotiations, representations, or agreements, whether written or oral.

8 21. The Parties desire to fully and finally resolve Enforcement Matter No. 15-082 and any
9 other administrative or civil action that the Department could bring against the Plan arising from the
10 findings of the February 13, 2015, Follow-Up Survey Report or investigation of such findings by the
11 Department's Office of Enforcement conducted on or before the date this Stipulated Settlement
12 Agreement is executed. Additionally, this Stipulated Settlement Agreement resolves Deficiency #2
13 identified in the Department's Final Report regarding the Routine Survey of the Plan dated June 12,
14 2017. This resolution does not include any of the other deficiencies found in the June 12, 2017
15 Routine Survey Report.

16 22. This Stipulated Settlement Agreement may not be altered, amended or otherwise
17 changed or modified, except in writing signed by both of the Parties.

18 23. This Stipulated Settlement Agreement shall take effect upon execution by both Parties.

19 **AGREEMENT**

20 WHEREFORE, the Parties hereby agree and stipulate as follows:

21 24. **Comply with all laws.** The Plan shall obey all federal, state and local laws, rules and
22 regulations governing health care service plans. In the event that the Plan contends that any provision
23 or portion of this Stipulated Settlement Agreement becomes inconsistent or invalid based on (1)
24 legislation enacted or regulations adopted by the State of California or federal government which
25 have not been superseded, or (2) a final judgment has been entered by a court of competent
26 jurisdiction that is binding precedent from which no appeal or other judicial review has been taken,
27 or, if appealed, the final judgment has been affirmed by the court of last resort and is no longer
28 subject to further appeal or review, the process described below shall be followed.

1 The Plan will give written notice to the Department of its contention that there has been a
2 change in the law and shall indicate that such notice is being provided pursuant to this Paragraph 24
3 of the Stipulated Settlement Agreement. Such notice shall be sent to the attention of the Director.
4 The parties shall meet and confer in good faith, and if the parties do not reach agreement within sixty
5 (60) days after the Department's receipt of the Plan's written notice referenced above, the Plan may
6 file a declaratory relief action on the question of whether, and to what extent, the alleged change in
7 the law affects the Plan's responsibility to continue to perform in accordance with this Stipulated
8 Settlement Agreement. Any legal action taken by the Plan shall be venued in accordance with
9 Paragraph 28, and may not be filed by the Plan any sooner than the sixty-first day after the
10 Department receives the Plan's 60-day written notice. The Plan shall continue to perform in strict
11 compliance with this Stipulated Settlement Agreement (1) while the parties are going through the
12 meet and confer process, and (2) during the pendency of any such legal action and/or proceeding, and
13 (3) until a final and enforceable judgment is entered in favor of the Plan (i.e. a final judgment has
14 been entered from which no appeal or other judicial review has been taken, or if appealed, the final
15 judgment has been affirmed by the court of last resort and is no longer subject to further appeal or
16 review). The Department shall retain its full enforcement authority regarding the terms of this
17 Stipulated Settlement Agreement during the pendency of litigation regarding the Plan's contention
18 that a change in the law relieves it of its responsibility to continue to perform in accordance with this
19 Stipulated Settlement Agreement.

20 25. This Stipulated Settlement Agreement fully and finally resolves Enforcement Matter
21 No. 15-082 and any other administrative or civil action based on or related to the Follow-Up Survey
22 and/or facts and circumstances on or before the date this Stipulated Settlement Agreement is
23 executed. Nothing in this Stipulated Settlement Agreement shall constitute a disclaimer, accord,
24 relinquishment, estoppel, or a waiver of any form of any right or authority of the Department,
25 including without limitation to continue with its current investigations, surveys, audits, or
26 examinations and/or to exercise its enforcement and disciplinary authority relative to, or independent
27 of, those investigations, audits or examinations, with the exception of those made the subject of
28 Enforcement Matter No. 15-082. Nothing in this Stipulated Settlement Agreement shall limit, affect,

1 or inhibit in any manner the Department's powers to initiate any new or additional investigations,
2 routine or non-routine audits or examinations, or to require and/or order any remediation, penalties,
3 and/or other remedies the Department deems necessary or appropriate to carry out the objectives and
4 purposes of this Stipulated Settlement Agreement and/or the Knox-Keene Act, including, without
5 limitation, actions necessary to protect and/or effectuate remediation to enrollees and/or providers
6 with the exception of those resolved under Paragraph 21.

7 **26. Director's Order.** The Parties agree that the terms of this Stipulated Settlement
8 Agreement are not only a contract but they are additionally an Order of the Director, and the
9 Department may exercise any and all aspects of its enforcement authority to enforce the Plan's
10 compliance with any and/or all of its obligations under this Stipulated Settlement Agreement, and that
11 any remedy available to the Director is not exclusive, and may be sought and employed in any
12 combination with civil, criminal, and other administrative remedies deemed warranted by the
13 Director to enforce this Stipulated Settlement Agreement.

14 **27. Governing Law.** This Stipulated Settlement Agreement shall be governed by and
15 construed in accordance with the laws of the State of California without regard to conflicts of law
16 principles.

17 **28. Venue.** Each Party irrevocably submits to the jurisdiction of the California Office of
18 Administrative Hearings located in Sacramento, or the California superior court located in
19 Sacramento County, over any suit, action or other proceeding arising out of or relating to this
20 Stipulated Settlement Agreement and irrevocably agrees that all claims with respect to any such suit,
21 action or proceeding may be heard and determined in such venue.

22 **29. Penalty.** The Department, through its Director, has determined (in accordance with
23 the factors set forth in California Code of Regulations, title 28, section 1300.86, et seq.) that in lieu of
24 an administrative penalty being assessed against the Plan, the Plan will complete the Corrective
25 Action outlined under Paragraphs 30 - 45 below. As noted in detail below, the Corrective Action
26 includes **Monetary Consequences** should the Plan fail to meet a given requirement, benchmark or
27 deadline.

28 **30. Corrective Action.** The Plan will consult with Parker Dennison & Associates, Ltd.,

1 Behavioral Healthcare Consultants ("Consultant"), pursuant to the **Consultation Agreement**
2 discussed in Paragraph 33, under which the Plan, with the advice of the Consultant, will work on the
3 corrective action area items listed under Paragraph 40 (herein "**Corrective Action Areas**") and
4 accomplish the **Deliverables** found under Paragraph 44.

5 31. **Expert Consultation.** The Plan will bear all costs of the Consultant's services, as
6 mutually agreed upon by the Plan and the Consultant, throughout the entire **Consultation Period**, as
7 defined under Paragraph 38. The Consultant will offer its consultation services and offer
8 recommendations to the Plan designed to aid the Plan in improving upon the **Corrective Action**
9 **Areas** and achieving the **Deliverables**. The Plan, in consultation with Consultant, will memorialize
10 its anticipated plan(s) for addressing the **Corrective Action Areas** and achieving the **Deliverables** in
11 a **Work Plan** as outlined under Paragraph 36.

12 32. **Limits of Consultation.** This Stipulated Settlement Agreement is intended to aid the
13 Plan in further improving its Behavioral Health Quality Assurance program to ensure that effective
14 action is taken to improve care where deficiencies are identified in service areas, including
15 accessibility, availability, and continuity of care. (Health & Saf. Code, §1370; Cal. Code Regs.,
16 tit. 28, § 1300.67.2.2, 1300.70(a)(3), 1300.70(b)(1)(D), 1300.70(b)(2)(G)(3).) This agreement is not
17 intended to grant either the Department or Consultant the authority to regulate any relationship
18 between the Plan and any other group or entity beyond the Department's existing regulatory authority
19 under the Knox-Keene Health Care Service Plan Act of 1975, as amended, Health and Safety Code
20 section 1340, *et seq.*, regulations promulgated thereunder ("Knox-Keene Act"), or any other state or
21 federal law. The Department does not intend to dictate clinical practice decisions of licensed
22 providers.

23 33. **Plan-Consultant Agreement.** Prior to execution of this Stipulated Settlement
24 Agreement, a "Consulting Services Letter Agreement" was executed between the Consultant and the
25 Plan. The terms of that agreement and any renewal agreement(s) are incorporated herein (collectively
26 referred to as "**Consultation Agreement**"). In the event of any conflict between this Stipulated
27 Settlement Agreement and the **Consultation Agreement**, the terms of this Stipulated Settlement
28 Agreement shall control.

1 34. **Plan-Consultant Interactions.** The Plan and Consultant will periodically meet, either
2 in-person or telephonically, to accomplish the goals of this Stipulated Settlement Agreement. During
3 the **Consultation Period**, the Consultant will periodically make recommendations to the Plan on how
4 to improve upon the **Corrective Action Areas** or achieve the **Deliverables**. The Plan will consider
5 the recommendations of the Consultant in good faith to achieve the objectives of this Stipulated
6 Settlement Agreement, and will discuss alternative recommendations with the Consultant if the Plan
7 disagrees with the Consultant's recommendation(s). In any event where the Plan and Consultant
8 cannot agree on a course of action to implement, resulting in a **Formal Request** under Paragraph 41,
9 the Plan will adhere to the **Impasse** procedure outlined herein.

10 35. **Consultant Access.** Consultant shall have reasonable access to Plan documents and
11 information, when requested, to assist the Consultant in performing its duties as required under this
12 Stipulated Settlement Agreement. Consultant may request to meet with Plan, medical group or
13 vendor personnel, as necessary. The Consultant may request specific documents or reports, either to
14 be provided to the Consultant or to the Department. While the Parties do not anticipate that
15 Consultant will require regular on-site visits to specific medical facilities, such visits may become
16 necessary. Such facility site visits will be utilized only when other forms or sources of information or
17 data are determined by the Consultant to be insufficient. When Consultant requests from the Plan
18 documents, information or meetings, the Plan shall have twenty (20) calendar days to provide the
19 requested documents, information or meeting arrangements. If the Plan declines to provide what is
20 requested by Consultant, it shall first attempt to informally resolve the dispute with Consultant. In
21 the event of an **Impasse**, the Plan or Consultant may request intervention by the Department under
22 Paragraph 43. In the event of such intervention, the Department will resolve the dispute in
23 accordance with the **Impasse** process as set forth in Paragraph 43. The Department expects that the
24 Consultant will first utilize the least burdensome and/or intrusive methods to obtain information so as
25 to not disrupt patient care, before utilizing other methods of access to the requested information.

26 36. **Consultation Work Plan.** The Plan and Consultant will agree upon a **Work Plan**
27 (herein "**Work Plan**"), which will be subject to Department review and potential input. This **Work**
28 **Plan** will outline the Plan and Consultant's agreed upon action plan to address the **Corrective Action**

1 **Areas** and achieve the **Deliverables**. This **Work Plan** will include corrective actions, performance
2 measures, potential reporting provisions, timelines, deadlines and expected outcomes. The initial
3 **Work Plan** for Year 1 of the **Consultation Period** shall be agreed upon by September 30, 2017, and
4 will be updated annually until completion of the **Consultation Period**.

5 37. **Quarterly Meetings**. The Plan, Department and Consultant will meet telephonically
6 or in-person on a quarterly basis during the **Consultation Period**. The purpose of these meetings
7 will be to provide a progress review and status update of the activities performed pursuant to this
8 Stipulated Settlement Agreement. These meetings may also include informal discussion regarding
9 areas of disagreement between the Plan and Consultant that have yet to rise to the level of a **Formal**
10 **Request** under Paragraph 42.

11 38. **Outcome of Expert Consultation Period**. The **Consultation Period** will be for a
12 period of one (1) year to three (3) years, from the date of execution of this Stipulated Settlement
13 Agreement, unless terminated earlier, as set forth below (herein "**Consultation Period**"). If, prior to
14 the end of the **Consultation Period**, the Plan demonstrates a sustained pattern of timely appointment
15 access compliance within its behavioral health departments, the Department may terminate the
16 **Consultation Period**. At any time after the initial six-months of the **Consultation Period**, either the
17 Plan or the Consultant may request or recommend to the Department that the **Consultation Period** be
18 concluded based upon the assertion that the Plan has achieved sustained compliance. In no event or
19 under any circumstances will the **Consultation Period** extend beyond three (3) years from the date of
20 execution of this Stipulated Settlement Agreement.

21 39. **Department – Consultant Communications**. The Plan acknowledges and accepts
22 that the Consultant may communicate with the Department as necessary to discuss the Consultant's
23 duties, findings or observations related to this Stipulated Settlement Agreement. The Plan
24 acknowledges and accepts that the communications between the Plan and Consultant may be
25 disclosed to the Department. This may include a description of documents the Consultant believes
26 the Department should request and review. In order to encourage open and transparent
27 communications, the Plan shall be invited to listen in, or be copied on, all communications between
28 the Consultant and Department. If the Department or Consultant reasonably believe the conversation

1 will include disclosure of confidential Department information that is not available to the industry at
2 large, those communications may be held outside the presence of the Plan. All such communications
3 and all information and records obtained by the Consultant are subject to all applicable
4 confidentiality, privilege, and discovery immunity under state and federal laws, including but not
5 limited to the official information privilege, the deliberative process privilege, HIPAA, the quality
6 and peer review privilege, and common law privacy of the Plan's members. This provision will
7 survive the expiration of this Agreement.

8 40. **Corrective Action Areas.** The Plan and Consultant will focus on the following
9 **Corrective Action Areas** in order to aid the Plan's Behavioral Health Quality Assurance program in
10 ensuring that effective action is taken to improve care where deficiencies are identified in service
11 areas, including accessibility, availability, and continuity of care (see Health & Saf. Code, § 1370;
12 Cal. Code Regs., tit. 28, §§ 1300.67.2.2, 1300.70(a)(3), 1300.70(b)(1)(D), 1300.70(b)(2)(G)(3)):

13 a. Improved documentation of the Plan's quality improvement efforts for access
14 compliance. The Plan will develop a comprehensive Behavioral Health Quality Assurance
15 ("QA") document that includes the Plan's behavioral health access compliance quality
16 improvement efforts and all processes related to ensuring compliance with access standards
17 including documenting roles, resources, responsibilities, activities, timelines, and functions of
18 the health plan, and associated activities delegated to regional medical groups. (Herein
19 **"Corrective Action Area No. 1"**).

20 b. Improved transparency in behavioral health appointment access compliance
21 measurement. The Plan will develop a measurement mechanism or other means that
22 identifies all appointment requests not meeting the timely access standards for behavioral
23 health appointments with clear delineation of those resulting from member choice versus lack
24 of appointment availability. (Herein **"Corrective Action Area No. 2"**).

25 c. Improved monitoring of member impact of access insufficiency and associated real
26 time member remediation. This should demonstrate a clear policy and process ensuring that
27 all members who are not offered timely access are reviewed for risk and ensured their needs
28 are met. (Herein **"Corrective Action Area No. 3"**).

1 d. Fully implemented systematic process to monitor follow-up appointment access
2 adherence to member's treatment plan. Plan must provide a clearly defined and fully
3 implemented policy and process to be uniformly applied across both regions and all sites
4 ensuring that follow-up appointments are offered consistent with the treating professional's
5 clinical determination. (Herein "**Corrective Action Area No. 4**").

6 e. Improved internal corrective action plan ("CAP") development. Internal CAPs to
7 fully document the extent of root cause analysis and corrective action interventions. When a
8 CAP does not result in timely improved results, there will be a process and associated
9 documentation that demonstrates application of enhanced analysis, modification in CAP, and
10 intensified effort. (Herein "**Corrective Action Area No. 5**").

11 f. Improved integration of external provider access data and oversight. External provider
12 network will be fully integrated into the Plan's behavioral health access monitoring plan,
13 processes, and reporting. The Plan shall ensure that a member's appointment access when
14 referred to an external network complies with timely access standards found in Health and
15 Safety Code section 1300.67.2.2. (Herein "**Corrective Action Area No. 6**").

16 41. **Consultation Impasse.** Where the Plan and Consultant cannot agree on the **Work**
17 **Plan**, any Consultant recommendation or Plan alternative recommendation, access to documents or
18 information, or any other issue relating to this Stipulated Settlement Agreement, the Plan and the
19 Consultant will first attempt to resolve the issue informally. Where the Plan and Consultant cannot
20 resolve the issue informally, the Consultant will issue a formal, written request for the action,
21 document, or other item in dispute (herein referred to as "**Formal Request**").

22 42. **Formal Request Resolution Procedure.** Upon receipt of a **Formal Request**,
23 representatives of the Plan and the Consultant shall meet to discuss and attempt to resolve the **Formal**
24 **Request**. Unless otherwise agreed by the parties, such meeting(s) shall take place within 30 days
25 immediately following the receipt of the **Formal Request**. If the Plan and the Consultant agree to a
26 resolution, they shall compile and execute an agreement setting forth the terms of the resolution. The
27 Plan and the Consultant shall commit reasonably sufficient time to such **Formal Request** resolution
28 process. If a **Formal Request** is not resolved between the parties pursuant to this Paragraph 42

1 (herein referred to as an "**Impasse**"), the Consultant or Plan will request that the Department
2 intervene.

3 43. **Impasse Resolution.** The Plan and Consultant will immediately advise the
4 Department of the **Impasse**, and provide the Department with the details of the dispute and each
5 side's position. The Plan and the Consultant will each present to the Department their own proposed
6 resolutions to the **Impasse**, both of which must be reasonable and operationally feasible in the
7 respective opinions of the Plan and the Consultant. The Department will, within ten (10) business
8 days of receipt of notice of **Impasse**, choose one of the two proposed resolutions or reject both of the
9 proposed resolutions and will so advise the Plan and Consultant within five (5) business days of its
10 decision. In the event that the Department rejects both proposed resolutions, the Plan and the
11 Consultant shall submit new proposed resolutions, within ten (10) business days of the Department's
12 notice, for the Department's election pursuant to the process set forth above. The Department's
13 decision will be pursuant to the requirements of the Knox-Keene Act, and any other applicable state
14 and federal law and this Stipulated Settlement Agreement. The Department's decision will be final
15 and binding on the Plan. Any disputes submitted for the **Impasse** resolution under this provision will
16 not automatically extend or otherwise waive the Plan's obligation to achieve any Deliverable or
17 benchmark outlined under Paragraph 44.

18 44. **Deliverables/Benchmarks.** If the Plan fails to meet the benchmarks and/or deadlines
19 (herein "**Deliverable(s)**") listed below, the Plan shall pay the associated monetary consequence
20 (herein "**Monetary Consequence(s)**"), if applicable, in accordance with the provisions of Paragraph
21 45:

22 a. Initial **Work Plan** between the Consultant and Plan shall be developed and agreed to
23 by September 30, 2017. If the Plan fails to meet this **Deliverable**, it shall pay to the
24 Department \$75,000.00.

25 b. Improved measurement mechanism pursuant to **Corrective Action Area No. 2** by
26 January 31, 2018. If the Plan fails to meet this **Deliverable**, it shall pay to the Department
27 \$100,000.00.

28 c. Implementation of initial CAP process revisions pursuant **Corrective Action Area**

No. 5 by April 30, 2018. If the Plan fails to meet this **Deliverable**, it shall pay to the Department \$100,000.00.

d. Implementation of improved monitoring and remediation activities pursuant to **Corrective Action Area No. 3** by April 30, 2018. If the Plan fails to meet this **Deliverable**, it shall pay to the Department \$100,000.00.

e. Updated **Work Plan** for Year 2 of the **Consultation Period** developed and agreed to between the Consultant and Plan by August 15, 2018. If the Plan fails to meet this **Deliverable**, it shall pay to the Department \$75,000.00.

f. Implementation of follow-up appointment monitoring process(es) pursuant to **Corrective Action Area No. 4** by July 30, 2018. If the Plan fails to meet this **Deliverable**, it shall pay to the Department \$100,000.00.

g. Implementation of improved data monitoring of external network access pursuant to **Corrective Action Area No. 6** by July 30, 2018. If the Plan fails to meet this **Deliverable**, it shall pay to the Department \$100,000.00.

h. Updated QA documents, policies and procedures pursuant to **Corrective Action Area No. 1** by October 31, 2018. If the Plan fails to meet this **Deliverable**, it shall pay to the Department \$100,000.00.

i. Plan internal access data reports to include follow-up appointment monitoring pursuant to **Corrective Action Area No. 4** by February 28, 2019. If the Plan fails to meet this **Deliverable**, it shall pay to the Department \$100,000.00.

j. Updated **Work Plan** for Year 3 of the **Consultation Period** developed and agreed to between the Consultant and Plan by August 15, 2019. If the Plan fails to meet this **Deliverable**, it shall pay to the Department \$75,000.00.

k. Compliance with Department decision concerning an **Impasse** or other issue between the Plan and Consultant by stated deadline. If the Plan fails to meet this **Deliverable**, it shall pay to the Department \$75,000.00.

45. **Monetary Consequences.** The Consultant will notify the Department and Plan, in writing if, in its expert opinion, any of the **Deliverables** were not met. The Plan will then have thirty

1 (30) calendar days from the Plan's and the Department's receipt of the Consultant's written report to
2 provide the Department a written response. In the event the Consultant determines that the Plan will
3 not meet one or more of the **Deliverables**, the Consultant shall provide the Plan with a preliminary
4 draft of its written report at least thirty (30) days prior to providing its written report to the
5 Department, in order to allow the Plan to provide comments, rebuttal, or to cure any deficiencies
6 identified by the Consultant. In making a determination, the Department has the discretion to
7 consider any and all factors, including the Plan's interactions with the Consultant, the reasons for
8 meeting or failing to meet any of the objectives or **Deliverables** found within this Stipulated
9 Settlement Agreement, and any other relevant considerations or information in determining whether
10 to ultimately impose, reduce or waive the assigned **Monetary Consequence(s)**. The Department will
11 notify the Plan within thirty (30) calendar days of receiving all relevant information from the Plan
12 and/or Consultant whether the **Monetary Consequence** will be imposed, reduced or waived. The
13 Plan will have ten (10) business days to pay the Department following such notification.

14 46. **Department Discretion.** At the Plan's request, the Department has the discretion,
15 with Consultant recommendation and/or input, to revise or modify the stated benchmarks, deadlines,
16 and **Deliverables**. Such discretion may be exercised if the Plan fails to achieve any of the stated
17 benchmarks, deadlines or Deliverables, despite its best efforts in working with the Consultant, or in
18 the event there is a change to state or federal law impacting the requirements of this Stipulated
19 Settlement Agreement. Any revision will be agreed upon and memorialized pursuant to Paragraph
20 22.

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ACCEPTANCE

Dated:

7/12/17

Kaiser Foundation Health Plan, Inc.



Kati Trautweiser
VP, Quality and Regulatory Services
Kaiser Foundation Health Plan, Inc.

I have read and fully discussed with the Plan the terms and conditions and other matters contained in the above Stipulated Settlement and Agreement. I approve its form and content.

Dated:

7/12/17

Kaiser Foundation Health Plan, Inc.



Victor D. Sipos
Plan Senior Counsel
Attorney for Kaiser Foundation Health Plan, Inc.

Dated:

7.18.2017

DEPARTMENT OF MANAGED HEALTH CARE



Drew Brereton, Complainant
Deputy Director | Chief Counsel
Department of Managed Health Care
Office of Enforcement